Response to Discussion Paper on the Consumer Protection Code and Digitalisation

Central Bank of Ireland Discussion Paper on the Consumer Protection Code and Digitalisation

27 October 2017

pwc

Table of Contents

1. Introduction 2

2. Responses 3

2.1 Digitalisation and the evolving financial services landscape 3

2.2 Potential Risks and Benefits 4

2.3 Consumer Protection Framework 5

2.4 Other General Questions 9

3. Conclusion 11

1. Introduction

Central Bank of Ireland
New Wapping Street
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Dublin 1
Sent by email to: consumerprotectionpolicy@centralbank.ie

27 October 2017

Dear Sir/Madam,

We are writing to you in response to the Central Bank of Ireland's ("CBI") Discussion Paper on the Consumer Protection Code ("CPC") and Digitalisation (the "Discussion Paper"). We welcome the publication of the Discussion Paper and the CBI's focus on verifying and enhancing its knowledge with respect to the digitalisation of the financial services landscape and aiding in the necessary discussion in relation to the benefits and risks to consumers.

As outlined in the PwC 2017 Digital IQ survey, firms see digital technology as being integral to their current and future business strategy and operations. However, firms own self-assessed view of their Digital IQ has been dropping, as technology continues to evolve. These contrasting findings in the PwC survey demonstrates the uncertainty and lack of clarity firms have in relation to understanding the digital impact on their customers. As demonstrated in your Discussion Paper, the impact on regulation is also significant. As such, regular and ongoing dialogue on this topic between regulators, consumers, industry bodies and other industry stakeholders is paramount in order to endeavour that digitalisation brings all the benefits it can to consumers and seeks to manage the associated risks.

Since the Discussion Paper was issued on 29 June 2017, we have actively engaged in discussions with regulatory, digital, operational and marketing professionals across multiple regulated institutions as well as other industry stakeholders. The purpose of this paper is not to outline PwCs insights or opinion on the questions asked or our insights on the Digitalisation of Financial Services but rather to summarise the prevailing views that PwC has received. Where conflicting opinions were received we have included both opinions.

For context, views have been received from representatives from the following regulated sectors:

Credit Institutions	Life Undertakings	Non-Life Undertakings
Investment Firms	Payment Services Firms	Retail Credit Firms
Alternative Investment Fund Managers	Insurance/Reinsurance Intermediaries	Investment Business Firms

In addition to the above, we have also received input from unregulated technology companies whose future activities may become regulated, and some public bodies.

We would welcome the opportunity to discuss next steps with the CBI and all of those we engaged with also indicated that they would welcome more dialogue with the CBI on the matters addressed in the Discussion Paper. We would view active participation by both industry stakeholders and the CBI as an extremely positive step in ensuring that the real risks and benefits of digitalisation to consumers are appropriately understood and accounted for in the CPC.

Yours sincerely,

Sinead Ovenden

Sinead Ovenden
Partner

2. Responses

2.1 Digitalisation and the evolving financial services landscape

Q1. Are there examples of other relevant types of innovation in retail financial services, which are not already covered in this Discussion Paper? If so, please provide details.

Specifically in relation to innovation, firms felt the following are likely to become prevalent:

- Artificial Intelligence ("AI") and Robo-Advice, particularly in the areas of investment advice and claims handling. These innovations have already been seen in other jurisdictions, including the UK, and it was strongly felt that it would soon become prevalent in the Irish market. This technology is based on automated decision making processes which provide many benefits to consumer. There is a challenge to ensure the technology acts in the best interests of the individual consumer.
- Use of bio-metrics and health trackers in the health and insurance industries are likely to become prevalent as a more accurate way of recording relevant data and using it as a means of calculating risk.
- Real time insurance which monitors driver's behaviour and amends premiums accordingly.
- Car technology- especially driverless or partially automated cars may impact the need for insurance but may also lead to more complex claims.
- E-identification and analysis of consumers online presence i.e. moving beyond passport and utility bills for AML or bank statements for financial suitability is likely to occur. However, given how easily data can be manipulated, or identities created, firms will need to ensure fraud risks are managed. This may have an impact on pricing within certain industries.
- Price comparison sites which are more prevalent in other jurisdictions such as the UK will continue to become more popular in Ireland.
- Cloud technology adoption in Ireland is currently behind other jurisdictions however this is expected to change which again brings cyber security and fraud risks.
- Information overload was a challenge raised by many. The use of alternative methods of disseminating information to consumers such as Quick Response ("QR") codes that can be easily stored and accessed by consumers may mitigate some of the risks of information overload.
- Distributed ledger, Blockchain and smart contracts were also mentioned on multiple occasions by firms.

Data Protection concerns were raised a number of times, and while it is noted that this is beyond the scope of the paper, participants made observations on the areas of overlap, and suggested it would be helpful if the CBI and the Office of the Data Protection Commissioner were aligned on the requirements for data protection as financial services and personal data become further entwined.

Q2. Considering the Irish market, what innovations are more likely than others to develop and/or have the greatest impact on consumers? Please provide reasons for your answer.

All the areas referenced in the response to Q1 above were deemed by firms to be applicable to the Irish market.

2.2 Potential Risks and Benefits

Q3. Please outline any other potential benefits or risks for consumers that have not been captured in this section?

- The majority of firms indicated that accessibility and value for money are two of the key benefits of digitalisation for consumers.
- Digitalisation allows consumers access to more information than ever before and firms used price comparison websites as a key example of this where consumers can instantaneously compare similar products across a wide range of providers which has delivered significant financial benefits to consumers.
- While the accessibility to information and its potential for better decision making was raised as a key benefit, firms also acknowledged that there is a risk that too much information can be as bad as too little. This is particularly the case when material levels of legal and regulatory required information are provided to consumers on platforms that are not suitable for reviewing and considering large volumes of information e.g. handheld devices or where features allowing consumers to simply confirm. While this has always been the case, the ubiquitous 'click to accept' nature of online commerce poses a risk that firms can formally evidence that information has been provided to a consumer while in reality consumers online habits mean that they may not read through all the key information. Firms referenced that when CPC was first developed there were a relatively small number of traditional channels through which financial services were provided with paper and email communication being the dominant communication methods. With the multi-channel nature of digital distribution firms felt that there is a need to address the mandatory information they are required to provide and introduce a more risk based and layered approach which would look to ensure consumers obtain the key information they need.
- The other risk highlighted was that there is an increasing number of unregulated platforms, whether they be social media platforms, message boards etc. where incorrect information and opinion in relation to regulated services providers and products, positive and negative, can be formed leading to incorrect decision making by consumers.
- Firms suggested that they would welcome a dedicated consultation process in relation to mandatory information requirements and would be keen, where possible, to introduce a more risk based and layered approach which would seek to focus on the outcome of well-informed consumers rather than consumers that have been given a lot of information.
- Firms also stated that they would encourage the CBI and Industry Bodies to promote an online skills campaign for consumers as it relates to purchasing and using financial services products in an effort to highlight the risks of "click to accept" tendencies, non-regulated platforms etc.

Q4. Considering the Irish market, what benefits and risks do you think are most likely to materialise and/or have the greatest impact on consumers? Please provide reasons for your answer.

All the areas referenced in the response to Q3 were deemed applicable to the Irish market.

Q5. If you have observed detriment caused to a consumer(s) as a result of digitalisation/financial innovation, please provide details and evidence of same.

We received a number of comments on this question in relation to potential detriment albeit no specific examples:

- Some firms commented that parts of the country do not have broadband, therefore some consumers may be inadvertently denied access to certain online financial services, particularly where newer and innovative providers may have little to no physical presence.

- The removal of human intervention e.g. through branches, advisors or even phone representatives, may result in increasing risk to consumers of making ill-informed financial decisions. Without human intervention and online automation, the consequence of their decisions can appear to be insubstantial e.g online transactions rather traditional face to face cash transaction.
- Some consumers may struggle to make complaints where automation is involved e.g. chat bots. While such automation is currently more common in non-CBI regulated industries, it is beginning to be used in regulated firms.
- Cyber security issues have, in some instances, resulted in consumer detriment recently. The increase in digitalisation will increase level of online personal data and hence the risk of cyber security incidents.
- Outsourcing and increased use of third party platforms is leading to firms having less control over their customer data and the customer journey which may lead to increased consumer detriment.

2.3 Consumer Protection Framework

Q6. With reference to the potential risks and benefits for consumers in the area of access, do you consider consumers to be adequately protected in a more digitally-enabled financial services environment? Where possible, please provide examples and/or evidence to support your answer.

- In relation to access, some firms commented that the digitalisation of financial services may be driven by efficiency, competition and economic reasons which may not have customer outcome at the forefront of design. For example, while it may be efficient to use chat bots for customer communication and complaints, this practice may not be suitable for vulnerable customers.
- Reliance on technology and digitalisation may result in financial exclusion for certain cohorts of society. However, there is also a contrary view that online access will facilitate increased inclusion, particularly for the rural community. Also, bank branches operate during the working day and people who cannot easily get to branches can use online and mobile banking without having to take time off work.
- Firms recognised that digitalisation has the potential to bring both enormous benefit and risk to consumers and suggest that the CBI focus on clear principle based requirements which ensure regulated firms embed consumer protection into the core of all design and process activities as they relate to digitalisation.

Q7. How could the consumer protections in the Code relating to access be enhanced? Please outline the reasons for your proposed enhancements.

The following suggestion was received in relation to this question:

- CPC could be enhanced with a specific requirement whereby, firms should formally assess the impact to consumers with no access to the required technology for online products or services. This should include the rationale for excluding these consumers from the target market and why, where applicable, offering practical non-digital alternatives is not feasible. Some firms commented that consumers with no access to this technology or the ability to use it should always be provided an alternative mode of access, particularly for basic financial products.

Q8. With reference to the potential risks and benefits for consumers in the area of provision of information, do you consider consumers to be adequately protected in a more digitally-enabled financial services environment? Where possible, please provide examples and/or evidence to support your answer.

In general, most firms we spoke to almost uniformly raised a concern that they are being required to provide too much information which is leading to consumers not reviewing all the information presented to them and that this can be exacerbated in a digital environment:

- Some firms, particularly where the product range is subject to cooling-off period requirements, disagreed with this view and believe that the cooling-off mechanism is sufficient to allow consumers to reflect on the information provided.
- In order to meet regulatory obligations and protect the financial interests of the firm, there is a common tendency to over burden customers with information. As referenced above, consumers may simply confirm they have read and understood all information when they have not. A shorter, key facts document could be introduced, where is it not already required, to provide a summary of the key important facts which can then be supplemented with more detailed information.
- Most firms suggested that the CPC provision of information and advertisement requirements be reviewed as the current level of information is impractical on many digital platforms. It was also suggested that the repeated warnings on all material and advertisements has become desensitised with consumers. Alternative suggestions included links to product specific information or warning pages.
- Some firms suggested that staggering or layering the provision of information may be more appropriate via digital platforms i.e. only key information required up front with access to more detailed information being an option for the consumer during the sales process and additional information being provided post sales.

Q9. How could the consumer protections in the Code relating to the provision of information be enhanced? Please outline the reasons for your proposed enhancements.

A number of comments were received in this area:

- Section 9.8 of CPC states that warning statements must appear simultaneously with the benefits of the advertised product or service and in the case of non-print media it is sufficient that the warning statements are outlined at the end of the advertisement. A suggestion to be considered, is that advertising through digital channels have warnings at the start of the process. Alternatively, remove warnings entirely and replace within a key information/risk page that would be made available through a link during the sales and post-sales process.
- Where it is intended that information be read by a consumer on a smartphone or mobile device, large text may not be practical. It may be more beneficial to consumers if firms were given flexibility on information and warnings and ensuring they are appropriate rather than having to follow prescriptive requirements which go down to the level of font sizes. A suggestion received was that firms should be required to force customers to spend time on terms and condition screens rather than having the ability to skip past them.
- Other enhancements to be considered include a requirement to seek customer's affirmation they understand terms and conditions being provided digitally to ensure they have taken time to read the information, absorb it and consider their decision.

Q10. With reference to the potential risks and benefits for consumers in the area of suitability, do you consider consumers to be adequately protected in a more digitally-enabled financial services environment? Where possible, please provide examples and/or evidence to support your answer.

It was generally felt that digitalisation has the potential to be of great benefit to consumers with regards to suitability as it has the capacity to be uniquely bespoke to the individual consumer and gather a broader range of relevant data than otherwise may have been possible. However, there is a risk that customers may answer questions in a manner to get to the product they want rather than the one that is most suitable for them and that consumers may be more willing to do this when they are interacting online rather than if they were face to face with a provider or intermediary.

Q11. How could the consumer protections in the Code relating to suitability be enhanced? Please outline the reasons for your proposed enhancements.

The following enhancements were suggested:

- If algorithms or other automation are being used to determine suitability the industry would welcome specific guidelines and would recommend development of such through a consultation process.
- The definition of suitability could be reconsidered in light of the digital world and perhaps such review could also consider consistency with other regulations.
- A Customer Champion or similar role could be a requirements for oversight of entire sales process from product design to after sales services, whose role is to ensure optimal customer outcomes.

Q12. With reference to the potential risks and benefits for consumers in the area of complaints, do you consider consumers to be adequately protected in a more digitally-enabled financial services environment? Where possible, please provide examples and/or evidence to support your answer.

- Social media can allow for some complaints to be dealt with much quicker than would otherwise have been possible. Conversely, in the digital era, there is a risk that it becomes impossible for firms to manage any expression of dissatisfaction about the firm as a complaint due to the volume of possible communication channels e.g. twitter, chat rooms etc. It is also recognised that the use of such public platforms is not always a secure environment for regulated entities to communicate with customers. For that reason, perhaps the definition or treatment of complaints should be reconsidered, for example, narrow the scope from “any expression of dissatisfaction”.
- It is recommended the CBI consider requirements that prevent firms using digital media as the sole medium for complaints as some consumers may not have access to same.
- It is acknowledged by firms that the data on social media platforms is a useful tool for firms when analysing consumer sentiment in relation to their firm, products and services. It was commented that a potential benefit is that more comprehensive and real-time analytics of complaints and complaint trends may be possible which may make firms more active and agile in terms of identifying key issues and improving the customer journey.

Q13. How could the consumer protections in the Code relating to complaints be enhanced? Please outline the reasons for your proposed enhancements.

The topic of complaints was a particular area of interest firms in relation to digitalisation and a number of areas were discussed:

- As referred to above, the volume of social media is difficult for firms to manage. In order to narrow the current definition of complaints as previously suggested, it is suggested that firms are only required to respond to their own social media accounts and other platforms such as public message boards are excluded.

- Another suggestion has been made to redefine complaints into two distinct categories, specifically in relation to digital platforms, and treat as follows;

  a) Expressions of dissatisfaction
  Firms would be required to monitor for general expressions of dissatisfaction across digital platforms where the firm owns such a platform, or where the firm has an official account. When an expression of dissatisfaction is identified, the consumer should be invited to make a specific formal complaint through a clear process. Firms would not be required to treat such expressions of dissatisfaction as complaints or actively monitor across platforms where they do not have an official presence e.g. 3rd party message boards. This would allow firms to focus resource on responses to formal customer complaints and other resources to further analyse trends and outcomes.

  b) Complaints

  Where complaints are made in relation to a specific firm, product or service directly to the firm using the channels provided, the current CPC provisions would continue to apply.

- Comments were also received stating that firms should ensure they have the ability to monitor expressions of dissatisfaction across all channels i.e. data from complaints received in writing, by email, through the firm's own social media channels etc. should all feed into the firms complaint and customer outcome MI. There were diverging views as to whether firms are currently, or have the capability to, include social media comments within their complaints and customer outcome MI.
- Consumers, particularly across generations, may have materially different preferences on how they would like to make and manage complaints. While some may prefer to speak to a company representative others, particularly those of a younger generation prefer and expect to be able to make complaints through digital channels. It was generally agreed that regulated financial services providers should offer both options to consumers.

Q14. With reference to the potential risks and benefits for consumers in the area of claims handling, do you consider consumers to be adequately protected in a more digitally-enabled financial services environment? Where possible, please provide examples and/or evidence to support your answer.

- The use of digital documents and e-signatures could expedite the claims process which would be of benefit to consumers. In addition, the potential to scan and send claim supporting documents e.g. receipts, particularly for small claims is a more efficient process and of benefit to consumers.

- Where automation is used in claims handling process, additional controls are required to identify fraud which is more often picked up by human judgement. Automation can provide additional controls that manual process will not.
- Automation and online processing is likely to speed up the process and provide a greater wealth and value to the claims process and is therefore deemed to provide a better customer outcome.

Q15. How could the consumer protections in the Code relating to claims handling be enhanced? Please outline the reasons for your proposed enhancements.

- No further suggestions were received on the area of claims handling.

Q16. With reference to the potential risks and benefits for consumers in the area of record keeping, do you consider consumers to be adequately protected in a more digitally-enabled financial services environment? Where possible, please provide examples and/or evidence to support your answer.

The following comments were received in relation to this question:

- While not a new risk, cyber security risk and the ability to keep records secure was raised as a material issue where all or certain records are only kept digitally. Adequate security arrangements and back up are critical to the safe keeping of digital records.

- Information requests from consumers may be more comprehensively managed by firms in a digital environment.

- Record keeping requirements for interactions with consumers on 3rd party social platforms are not clear and firms expressed concerns over their ability to retain such records.

- The outsourcing of record keeping, digitally, to third party providers and particularly cloud providers was identified as a risk in case of data being corrupted, or subject to cyber-attacks.

Q17. How could the consumer protections in the Code relating to record-keeping be enhanced? Please outline the reasons for your proposed enhancements.

Multiple firms referenced an issue with digital technology and the paper or durable medium requirement in CPC

- It was generally suggested that more guidance in relation to what is deemed to be a durable medium needs to be provided and it needs to allow for digital record keeping.
- Some firms also suggested that the word "paper" should be removed entirely from the Code where it states that information must be provided on paper or another durable medium. Questions were raised as to whether SMS, e-signatures, PDFs etc. met the durable medium definition which firms appear to have differing opinion on.

Firms also suggested that more clarity, perhaps through guidance papers or an enhancement of CPC definitions, on what information needs to be maintained, e.g. social media communication is required. It was also suggested by a number of firms that the CBI looks to align the CPC record retention requirements with AML and Data Protection requirements as far as is possible.

2.4 Other General Questions

Q18. Are there other areas of the Code, where the current protections should be enhanced or amended to address risks arising from digitalisation?
If so, please:

a. ***set out the protections that you consider should be enhanced and why;***
b. ***outline how those protections could be enhanced, including the reasons for your proposals.***

No additional specific references were noted.

Q19. Are there other 'new risks' to consumer protection associated with technology/innovation where additional specific requirements are needed in the Code (arising from actual or potential consumer detriment), for example, cybersecurity risks?

Firms did not raise any other new risks that have not already being referenced elsewhere in this document.

Q20. Given responsibility for the protection of consumers lies with regulated firms, how should the Code put greater obligations on firms to use innovative technologies in a positive way, to improve services and better protect consumers' best interests? Please provide specific suggestions of how this could be achieved.

Overwhelmingly, firms believed that CPC should not impose obligations on firms to use innovative technologies and that competition within the market place on areas such as this will facilitate this naturally. In addition, it was referenced that there will always be cohorts of the market that require manual intervention and personal contact.

Q21. Should a principle be included in the Code that requires firms to design digital journeys in a manner that support consumers' decision-making and delivers good outcomes for consumers?

Conflicting comments were received on this question. The majority, as echoed in responses provided elsewhere in this paper, were that yes, holistic customer outcomes should be embedded in digital design from the outset. However many believed that the best way to achieve this was to make CPC more principle based and less prescriptive as many of the requirements are not appropriate for digital services.

Some firms disagreed and believed that the existing principles should suffice if they were supplemented with more guidance on key areas e.g. automation, complaint handling etc. and that digital is just another channel through which firms operate.

Q22. Are there any impediments in the Code that currently prevent firms from adopting technologies which may be beneficial to consumers? If so, please elaborate to explain how the Code could be amended to facilitate access to such benefits, without diluting existing consumer protections.

Nothing further to the above comments were received.

Q23. In the context of the development of consumer protection policy related to innovative technologies, should the CBI be more innovative in its approach to stakeholder engagement? If so, what approaches should be considered and why?

Many firms agreed that the CBI should be more interactive with firms and industry bodies with a view to providing more guidance to supplement CPC on key risk areas:

- Firms referenced that the CBI receives significant levels of data from firms through, for example, conduct of business returns and error reports and that it could look to use analytics to share this information at an anonymised industry level which would help firms understand the key issues other firms or industries are experiencing and would ultimately be of benefit to consumers.
- The creation of a sandbox environment for newer technologies as operated in the UK by the FCA and other countries was also raised as a key requirement that would support firms to manage consumer risks brought about by new technologies in an open and collaborative manner.

3. Conclusion

In conclusion, based on our discussions, firms overwhelmingly welcomed the paper and agree that the rate of digitalisation of financial services will continue to increase in the short to medium term. Firms seemed broadly aligned with the risks and benefits that digitalisation brings with the balance being an overall benefit to consumers. Firms also agreed that a more detailed consultation process on amending CPC in the context of digitalisation would be a useful exercise.

Firms also discussed that the ever increasing number of regulated financial services industries, diversification of company types beyond the traditional, alternative financial products etc. means that an alternative approach to keeping regulations and codes of conduct up to date is required. Many firms suggested that a lighter more principle based CPC which would be supplemented by more frequent and detailed guidance papers on key consumer risk areas may be an alternative approach.

We trust that this document aids the CBI in verifying and challenging its assumptions as well as understanding the views of many of its industry stakeholders. We would welcome further discussion on any of the points raised by the firms or indeed PwC's own insights on the Digitalisation of Financial Services in more general.